

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION**

**CLAUDE JORDAN, III,**

**Plaintiff,**

**vs.**

**MICHAEL C. MOORE,**

**Defendant.**

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**5:05-cv-128 (CAR)**

***ORDER ON THE REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE***

Before the Court is a Report and Recommendation (Doc. 34) from United States Magistrate Judge Claude W. Hicks, Jr., which recommends granting Defendant's Motion for Summary Judgment (Doc. 31), with respect to Plaintiff's State Law and United Nations claims, and denying Defendant's Motion for Summary Judgment, with respect to Plaintiff's Eighth Amendment claim. Defendant objects to the Magistrate Judge's recommendation and filed a formal Objection outlining his argument. (Doc. 37). The Court has thoroughly reviewed Defendant's Motion, Plaintiff's Response, Judge Hicks' Recommendation, and Defendant's Objection. Pursuant to 28 U.S.C. § 636(b)(1), the Court has made a de novo determination of the portion of the Report and Recommendation to which Defendant objects.

Defendant argues the Magistrate Judge "improperly fail[ed] to evaluate the effect of undisputed contemporaneous medical records indicating no injury from the alleged beating." (Def.'s Obj. 2.) Contrary to Defendant's assertion, seriousness of the injury is relevant only where some application of force was justified but where it is alleged that the force applied exceeded the force needed in the circumstances. In a situation where there is no justification for the use of force, any use of force is excessive. See Hudson v. McMillian, 503 U.S. 1, 7-8 (1992). As such, the

Recommendation is **ACCEPTED**, and Defendant's Motion for Summary Judgment is **GRANTED IN PART** and **DENIED IN PART**. Plaintiff's State Law and United Nations claims are dismissed and Plaintiff's Eighth Amendment claim remains.

**SO ORDERED**, this 17<sup>th</sup> day of June, 2008.

S/ C. Ashley Royal  
C. ASHLEY ROYAL  
UNITED STATES DISTRICT JUDGE

SCS/ssh